

Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NORTHSORE SHEET METAL, INC.,

Case No. 2:15-cv-01349 BJR

Plaintiff,

v.

SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION,
LOCAL 66,

***PLAINTIFF'S MOTION TO LIFT THE
COURT'S MAY 23, 2016 STAY OF
PROCEEDINGS***

Defendant.

Noted on Motion Calendar: June 23, 2017

Plaintiff Northshore Sheet Metal, Inc. ("Plaintiff" or "Northshore"), by and through its counsel, hereby moves the Court for an Order lifting its May 23, 2016 Stay of Proceedings. The Parties have met the obligations as outlined in the Court's May 23, 2016 Order. The stay should be lifted, and Plaintiff should be allowed to proceed with its action. In accordance with the Court's Standing order, the Parties have met and conferred on this motion.

BACKGROUND FACTS

On May 23, 2016, the Court *sua sponte* issued a stay on the current proceedings. Dkt. 71. The stay was based on the parties failure to mediate and arbitrate the fringe

1 benefits issue required in the Court's September 4, 2015 Order (Dkt. 21). The Court stayed
 2 the entire proceedings until the Parties had fully complied with its September 4, 2015 Order.
 3

4 On July 25, 2016, the Court modified its Stay, requiring the parties to proceed to
 5 mediation and arbitration on Plaintiff's contractual damages' claim. Dkt. 77.
 6

7 In accordance with the Court's Orders, the parties mediated the fringe benefits claim,
 8 as well as the contractual damages claim. Hilgenfeld Decl., ¶ 3. Arbitration was conducted
 9 over both matters from January 30, 2017 through February 2, 2017. *Id.*, ¶ 4. On April 28,
 10 2017, Arbitrator Douglas Hammond issued his award. *Id.*, ¶ 5, Exh. 1.

PROCEDURAL HISTORY

10 On August 24, 2015, Plaintiff filed a complaint against Sheet Metal Workers
 11 International Association Local 66 ("Defendant" or "Union"), alleging the Union breached
 12 its contractual obligation not to strike. Dkt. 1, ¶¶ 28-36. Plaintiff sought injunctive relief
 13 and monetary damages against the Union based upon its contractual breach of the Labor
 14 Agreement. *Id., Prayer for Relief.* (The contractual breach claim is generically referred to
 15 as the "Contractual Damages" claim.) Plaintiff also sought a *Boys Market* injunction
 16 limiting the Union's strike action.
 17

18 The Union had actively engaged in a strike action at Northshore and specified job
 19 sites. Dkt. 4, ¶ 9. The Union's pickets announced that the strike was over benefits. *Id.*,
 20 Exh. 1. The Union claimed that Northshore allegedly owed 401(k) Trust benefits, pursuant
 21 to a January 2015 settlement agreement. The January 2015 settlement agreement contained
 22 a mandatory, binding arbitration provision, as did the 2012 – 2015 Collective Bargaining
 23 Agreement between the parties. Rather than arbitrate the dispute, the Union initiated its
 24

1 strike action. (This claim asserted by the Union is generically referred to as the “Fringe
 2 Benefits” claim.)

3 On September 4, 2015, the Court’s Order granted in part, and denied in part,
 4 Plaintiff’s *Boys Market* injunction. Dkt. 21. In doing so, the Court ordered the Parties to
 5 proceed to mediation and arbitration on the Fringe Benefits claim.

6 On September 28, 2015, Plaintiff amended its complaint, asserting a claim against
 7 the Union for Secondary Boycott violations, pursuant to 29 U.S.C. § 187. Dkt. 24. (This
 8 claim is generically referred to as the “Secondary Boycott” claim.) A jury trial was
 9 scheduled for Plaintiff’s Contractual Damages and Secondary Boycott claims for
 10 October 24, 2016. Dkt. 31.

11 On May 23, 2016, the Court stayed the entire proceeding until the Parties proceeded
 12 to mediate and arbitrate the Union’s Fringe Benefits claim. Dkt. 71. On July 25, 2016,
 13 amended its Order to include Plaintiff’s Contractual Damages claim as part of the claims to
 14 be mediated and arbitrated. Dkt. 75. This meant that Plaintiff’s Secondary Boycott claimed
 15 remained stayed until the Parties mediated and arbitrated the Fringe Benefits and
 16 Contractual Damages claims.

17 On May 9, 2016 and October 19, 2016, the Parties mediated the Fringe Benefits and
 18 the Contractual Damages claims. Hilgenfeld Decl., ¶ 3. The Parties were unable to resolve
 19 the matter, and the claims then proceeded to arbitration. The Parties selected Douglas
 20 Hammond as the arbitrator. Hilgenfeld Decl., ¶ 4. Arbitration was conducted before
 21 Arbitrator Hammond on January 30, 2017 through February 2, 2017.

22 On April 28, 2017, Arbitrator Hammond issued his award. Hilgenfeld Decl., Exh. 1.
 23 He found in favor of Northshore on both claims (i.e. Union’s Fringe Benefits claim, and
 24

1 Northshore's Contractual Damages claim). He also provided the Union with thirty (30) days
 2 to pay the award. The award has been satisfied.
 3

ANALYSIS

4 "The same Court that imposes a stay of litigation has the inherent power and
 5 discretion to lift it. *Canady Erbe Elektromedizin GmbH*, 271 F. Supp. 2d 64, 74 (D.D.C.
 6 2002)) "When circumstances have changed such that the court's reasons for imposing the
 7 stay no longer exist or are inappropriate, the court may lift the stay." "*Id.*"

8 In accordance with the Court's May 23, 2016 Order Staying the Proceedings, the
 9 Parties have met the requirements as set forth by the Court. The Union's Fringe Benefits
 10 claim and the Plaintiff's Contractual Damages claim have both been mediated and
 11 arbitrated. The basis and reasoning used by the Court to stay the proceedings was to have
 12 certain matters proceed first toward arbitration. That has occurred. Thus, the Court's
 13 reasoning for imposing the stay no longer exists, and the Stay should be lifted. Plaintiff's
 14 Secondary Boycott claim should now be permitted to proceed.
 15

CONCLUSION

17 Plaintiff respectfully requests that the Court to permit its Secondary Boycott claim to
 18 proceed, lifting the stay of proceedings. The May 23, 2016 stayed the proceedings until the
 19 Parties had proceeded to mediation and arbitration on the ordered claims. That has
 20 occurred. Plaintiff should be allowed to go forward on its Secondary Boycott allegations.
 21 For all of the aforementioned reasons, the Court should grant Plaintiff's request to lift its
 22 stay of the proceedings.
 23
 24
 25

Respectfully Submitted this 2nd day of June, 2017.

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8 **Attorneys for Plaintiff**

9 **Northshore Sheet Metal, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2017, I electronically filed the foregoing ***PLAINTIFF'S MOTION TO LIFT THE COURT'S STAY OF PROCEEDINGS*** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

I further certify there are no known non-CM/ECF parties who require service in this matter.

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